

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2003, And to Reflect That Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING ON
NOTICES OF INTENT TO CLAIM COMPENSATION**

1. Introduction

The prehearing conference (PHC) in this general rate case (GRC) of Southern California Edison Company (SCE) was held on June 13, 2002. Pursuant to § 1804(a)(1), Aglet Consumer Alliance (Aglet), Agricultural Energy Consumers Association (AECA), The Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN) each timely filed a notice of intent (NOI) to claim compensation for participation in this proceeding.¹ Each NOI was filed within 30 days of the PHC. In accordance with § 1804(b), this ruling provides a preliminary determination that AECA, Aglet, NRDC, and TURN will be eligible

¹ Citations to sections herein are to the Public Utilities Code.

to claim awards of compensation. With respect to AECA, the determination is conditioned upon its successfully making a showing of significant financial hardship and it providing certain other information, described herein, in any request for compensation that it files.

2. Customer Status

To be eligible for compensation, a participant in a formal Commission proceeding must establish that it is a “customer” according to one of three definitional categories set forth in § 1802(b):

“Customer” means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participation in a commission proceeding.

Decision (D.) 98-04-059 (at mimeo., Conclusion of Law 5, p. 88) requires a participant seeking compensation to explain how it meets the definition of customer. Aglet, NRDC, and TURN have fully met this requirement. Each of them has demonstrated that it is a Category 3 customer as defined in § 1802(b), i.e., a “representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.” AECA’s customer status showing is discussed below.

AECA, an incorporated nonprofit association, is authorized pursuant to its articles of incorporation and bylaws to represent and advocate the interests of agricultural customers of electrical and gas utilities in California. AECA states

that all of its members are “agricultural utility customers,” including water districts as well as individual growers and produce cooling operations. AECA further states that many of these are customers of applicant SCE. AECA points out that a May 20, 1998 ruling in Application (A.) 97-12-020 found it to be a Category 2 customer, i.e., “a representative who has been authorized by a customer.” Subject to the qualifications discussed below, AECA appears to be a Category 2 customer, as defined in § 1802(b), for purposes of this proceeding.

State, local, and federal government agencies do not qualify as customers under § 1802(b), nor do entities established by local government entities to participate in our proceedings. AECA states that it is not established or formed by a local government entity for the purpose of participating in Commission proceedings. However, as noted in an earlier ruling that addressed AECA’s status as a customer:

It might be questioned whether AECA’s representation and advocacy on behalf of the interests of water districts in any way affects AECA’s customer status. [2] Although AECA itself is not a government agency, and it reportedly was not established or formed by a local government entity for the purpose of participating in Commission proceedings, the role of water districts within AECA warrants further consideration by the Commission. [3] (A.00-01-009, June 19, 2000 ruling, p. 3.)

² In a footnote at this point the ruling stated the following: “AECA does not state the number of the water districts that it represents that are SCE customers. In an NOI ruling issued on March 12, 1999 in A.98-05-014, et al., a proceeding that pertained to both SCE and Pacific Gas and Electric Company, it was noted that AECA represented 42 agricultural water districts. As reported by AECA in a notice of ex parte communication filed in A.99-09-053 on June 15, 2000, a list of ‘some of its members’ includes 34 ‘water members.’”

³ In a footnote at this point the ruling stated the following: “This is not the first time that AECA has stated that it represents water districts, and the Commission has

Footnote continued on next page

The Commission has held that “the agent for a group of public entities [350 school districts] that, on their own, would clearly be ineligible for compensation under Section 1802(b)....cannot get around this rule merely by pooling its resources under a joint powers agreement and subcontracting their participation to a separate entity.” (D.96-09-040, 68 CPUC2d 33, 35.) While D.96-09-040 dealt specifically with groups of government entities formed by joint powers agreements pursuant to Government Code § 6500, et seq., the underlying principle—that a group of entities that individually do not qualify as customers cannot overcome the disqualification by simply joining together as a group—may be applicable here. In its request for compensation, AECA should demonstrate that it qualifies as a customer in this proceeding under § 1802(b) notwithstanding its representation of water districts. (*Id.*, pp. 3-4.)

While AECA states that all of its members are “agricultural utility customers,” it does not define that term. One possible definition would be a person or organization that takes service from a utility under one or more of that utility’s agricultural rate schedules, but it seems possible that AECA is using a broader definition. In the June 15, 2000 ex parte notice (see Footnote 2, *supra*), AECA indicated that its members include several agricultural trade associations, county farm bureaus, and related organizations. It seems reasonably clear that this type of AECA member represents or is composed of some agricultural utility customers, but it is less clear that the member itself is such a customer. In addition to addressing the role of its water district members, AECA should provide additional information to clarify the nature and role of its

previously found AECA eligible for compensation despite such representation. However, I have not found where the Commission has specifically addressed whether the representation of water districts affects AECA’s customer status. Given the Commission’s obligation to administer the intervenor compensation statutes (§ 1801, et seq.) in accordance with the law, it behooves the Commission to assure itself that a customer who is awarded compensation meets the definition of ‘customer.’”

association members, and explain whether and how such members affect its status as a customer under § 1802(b). (*Id.*, p. 4.)

The SCE rate proceeding in which the above-quoted ruling was issued was dismissed by D.02-01-031 before intervenors filed testimony or hearings were held, and AECA did not file a request for compensation in that proceeding. Nevertheless, the questions raised in that ruling remain. I again determine that in the event that AECA files a request for compensation in this proceeding, it should include in that filing a demonstration of how it qualifies as a customer in this proceeding under § 1802(b) notwithstanding its representation of water districts. AECA should also provide in any compensation request additional information to clarify the nature and role of its association members, and explain whether and how such members affect its status as a customer under § 1802(b). Finally, AECA should include data that would enable the Commission to affirm, update, or otherwise address the 61.6% compensation factor adopted for AECA in previous compensation awards. (See Footnote 4, *infra*.)

3. Interests Represented

The Commission has directed customers to address whether they will be representing customer interests that would otherwise be underrepresented, as described in D.98-04-059 and § 1801.3(f). (D.98-04-059, mimeo. at pp. 27-28 and Finding of Fact 13, p. 83.) Aglet, NRDC, and TURN have adequately addressed the Commission's requirement to discuss in their NOIs their representation of interests. AECA did not explicitly discuss whether it represents customer interests that would otherwise be underrepresented in this proceeding. AECA assumes the risk of reduced compensation or denial of compensation to the extent that it represents interests that are, or would be, adequately represented in the absence of AECA's participation. All intervenors are reminded that

substantial duplication of effort could potentially lead to a reduction in any award of compensation for which they might otherwise be entitled.

4. Significant Financial Hardship

Under § 1804(a)(2)(B), a showing of significant financial hardship may be made in the NOI or deferred until the request for compensation is filed.

Pursuant to § 1804 (b)(1), a finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding. AECA intends to make a showing with its request for compensation.⁴

Aglet addresses both the comparison test set forth in § 1802(g) (“... the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding”) and the rebuttable presumption described above. Aglet asserts that the economic interests of its individual members are small in comparison to the costs of effective participation in this proceeding because typical residential bills are on the order of \$1,000 annually, which is less than Aglet’s estimated cost of participation in the proceeding. None of Aglet’s current members is a large commercial or industrial customer that might use great quantities of energy.

⁴ The Commission has reduced compensation awards to AECA to reflect the fact that the financial hardship test yields different outcomes for its large and small members. Thus, for example, in D.98-02-099, the Commission authorized an award of 61.6% of AECA’s reasonably incurred fees because 61.6% of its member would incur significant financial hardship within the meaning of the statute. (D.98-02-099, mimeo., pp. 6-7.) In D.00-09-068, the Commission likewise awarded compensation for 61.6% of AECA’s costs for its participation in Pacific Gas and Electric Company’s test year 1999 GRC. AECA is placed on notice that a comparable adjustment based on the nature of the significant financial hardship of its members in this case may be ordered in any compensation award it receives in this proceeding.

Based on the foregoing, Aglet has shown significant financial hardship in connection with its participation in this proceeding. Aglet also notes that on March 7, 2002, the Administrative Law Judge (ALJ) in A.01-05-047 found that Aglet had made a showing of significant financial hardship, which creates a rebuttable presumption of eligibility in this proceeding.

NRDC received a finding of significant financial hardship in A.01-08-028 on November 1, 2001, creating a rebuttable presumption of eligibility in this case. TURN received a finding of significant financial hardship in A.01-09-003 on December 19, 2001, creating the rebuttable presumption in this case.

5. Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

Section 1804(b)(2) provides that in ruling on the NOI, the ALJ may address, among other things, any unrealistic expectations of compensation.

AECA, AGLET, NRDC, and TURN have each fulfilled these requirements. Each plans extensive participation. Their estimates of the total compensation they expect to request, \$112,500, \$80,260, \$25,125, and \$314,700, respectively, do not appear to be unrealistic for extensive participation in a major GRC.

Therefore, **IT IS RULED** that:

1. Agricultural Energy Consumers Association (AECA), Aglet Consumer Alliance (Aglet), The Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN) timely filed notices of intent to claim compensation in this proceeding.

2. Aglet, NRDC, and TURN are customers as defined by § 1802(b). AECA appears to be a customer as defined by § 1802(b), but certain questions remain. In any request for compensation that it files, AECA shall include a showing that it is a customer notwithstanding its representation of water districts, and shall provide additional information about the nature and role of its association members pursuant to the foregoing discussion.

3. AECA, Aglet, NRDC, and TURN have each fulfilled the requirements of § 1804(a)(2)(A) by providing statements of the nature and extent of their planned participation and itemized estimates of the compensation they expect to request.

4. Aglet, NRDC, and TURN have each shown significant financial hardship in connection with their participation in this proceeding or a rebuttable presumption of eligibility based upon an earlier finding of significant financial hardship. AECA must include a showing of significant financial hardship in any request for compensation that it files in this proceeding. Such showing by AECA shall include data that enables the Commission to either affirm, update, or otherwise address the 61.6% compensation factor adopted for previous awards to AECA.

5. AECA, Aglet, NRDC, and TURN may each seek compensation in this consolidated proceeding.

Dated August 27, 2002, at San Francisco, California.

/s/ MARK S. WETZELL

Mark S. Wetzell

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 27, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.